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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,225	02/27/2004	Andrew T. Fausak	049051-0223	4798

31824   7590   02/13/2007

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EXAMINER
BODDEN, EVRAL E

ART UNIT	PAPER NUMBER
2109	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

	Application No.	Applicant(s)
Office Action Summary	10/787,225	FAUSAK, ANDREW T.
	Examiner	Art Unit	
	Evral Bodden	2109	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-7</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-7</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>04/12/2004</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/14/04</u>.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   This action is in response to the following communication: Non-provisional

application filed 02/27/2004.

2.   Claims 1-7 are pending. Claim 1 is an independent claim. Claims 2-7 are

dependent claims.

Specification

Applicant is reminded of the proper language and format for an abstract of
the disclosure.

The abstract should be in narrative form and generally limited to a single
paragraph on a separate sheet within the range of 50 to 150 words. It is
important that the abstract not exceed 150 words in length since the space
provided for the abstract on the computer tape used by the printer is limited. The
form and legal phraseology often used in patent claims, such as "means" and
"said," should be avoided. The abstract should describe the disclosure
sufficiently to assist readers in deciding whether there is a need for consulting the
full patent text for details.

The language should be clear and concise and should not repeat
information given in the title. It should avoid using phrases which can be implied,
such as, "The disclosure concerns," "The disclosure defined by this invention,"
"The disclosure describes," etc.

3.   The abstract of the disclosure is objected to because the abstract is 218

words, which is greater than the 150 allowed (see above). Correction is required.

See MPEP § 608.01(b).

Claim Rejections - 35 USC § 101

4.   35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-7 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter, and are limited to software and not to one of a process, machine, manufacture or composition of matter, and therefore fails to fall into a category of patent eligible subject matter.

Furthermore, **claims 1-7** fall under a Judicial Exception since they represent "abstract ideas", which attempts to produce a "practical application." To provide a "practical application", of a judicial exception, a "physical transformation" must occur, or the invention must produce a "useful, concrete, and tangible result." In addition, just the production of software is not a "tangible result." Transformation of data does not result in any "physical transformation." Still further, if the claims are rewritten as a manufacture, then they would have to include a proper computer readable medium, which is currently lacking.

Claim Rejections - 35 USC § 103

1:      The following is a quotation of 35 U.S.C. 103(a) which forms the

basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or
> described as set forth in section 102 of this title, if the differences between the subject
> matter sought to be patented and the prior art are such that the subject matter as a
> whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability
> shall not be negatived by the manner in which the invention was made.

2.   The factual inquiries set forth in *Graham* v. *John Deere Co.*,

383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a

background for determining obviousness under 35 U.S.C. 103(a) are

summarized as follows:

    1.   Determining the scope and contents of the prior art.
    2.   Ascertaining the differences between the prior art and the
            claims at issue.
    3.   Resolving the level of ordinary skill in the pertinent art.
    4.   Considering objective evidence present in the application
            indicating obviousness or nonobviousness.

5.   **Claims 1-7,** are rejected under 35 U.S.C. 103(a) as being unpatentable

over Wookey 2002/0147974A1 published Oct. 10, 2002 and filed Feb. 9, 2001 in

view of Paul et al.(hereinafter Paul) 6,466,972B1 issued Oct. 15, 2002 and filed

Mar. 31, 1999.

In regards to **independent claim 1**, Wookey teaches

"the examiner interprets polymorphic as multiphase in the generation of " a:

- language for specifying computing tasks in multiple phases of generating and executing preboot execution specification, comprising: a computing-task specification generator; and a computing task interpreter, wherein generated computing task specifications are encapsulations, encapsulating execution environment dependent parameters, and wherein the generated computing task specifications are polymorphic with respect to the encapsulated parameters, as well as to the multiple phases of generating and executing preboot execution specification.

The reference to gathering environment information and installing the payload in Wookey on (Page 2, Paragraph13, lines 7-16):

- *The hosts then execute the survey tool to gather environment information for the first and the second host and to create output files based on the gathered information. An installation tool is also downloaded from the installation station at the first and second hosts. The output files are transmitted to the installation station that responds by transferring a payload of the systems management software to both the first and second hosts. The installation tool then acts at each of the hosts to install the payload on the first and second hosts.*

and using a downloaded survey script and installing the agent software based on

the survey script definitions, on (Paragraph 15 lines 5-20):

> • *A survey script is downloaded from the installation device onto the
> network computer device. The survey script is executed on the network
> computer device to automatically create an output file defining a
> computing environment for the network computer device. The method
> continues with downloading an installation Daemon from the installation
> station onto the network computer device, and then using the installation
> Daemon to retrieve the output file and transfer a copy to the installation
> station. In response, the installation station acts to transfer the agent
> software to the network computer device. The installation Daemon
> automatically receives and installs the agent software on the network
> computer device. In this manner, environment information and installation
> of the agent software are automated functions that require no operator
> intervention for successful completion.*

implies that the generation and execution of pre-boot specifications via task

interpretation does occur via polymorphic(multitask) procedures.

In regards to **dependent claim 2**, Wookey teaches a:

- language of claim 1, wherein the multiple phases of generating and executing preboot execution specification comprise: a definition phase, wherein computing tasks are defined; a generating phase, wherein specifications for the computing tasks are generated; and an execution phase, wherein the specifications for the computing tasks are executed.

The reference to gathering environment information and installing the payload in Wookey on (Page 2, Paragraph 13, lines 7-15):

- *The hosts then execute the survey tool to gather environment information for the first and the second host and to create output files based on the gathered information. An installation tool is also downloaded from the installation station at the first and second hosts. The output files are transmitted to the installation station that responds by transferring a payload of the systems management software to both the first and second hosts. The installation tool then acts at each of the hosts to install the payload on the first and second hosts.*

and using a downloaded survey script and installing the agent software based on the survey script definitions, on (Paragraph 15 lines 5-20):

- *A survey script is downloaded from the installation device onto the network computer device. The survey script is executed on the network computer device to automatically create an output file defining a computing environment for the network computer device. The method continues with downloading an installation Daemon from the installation station onto the network computer device, and then using the installation Daemon to retrieve the output file and transfer a copy to the installation station. In response, the installation station acts to transfer the agent software to the network computer device. The installation Daemon automatically receives and installs the agent software on the network computer device. In this manner, environment information and installation of the agent software are automated functions that require no operator intervention for successful completion.*

implies that the software is polymorphic (multiphase) in the definition, generation, and execution of its tasks.

In regards to **dependent claim 3**, Wookey teaches a:

- language of claim 1, wherein the behavior of the language itself is polymorphic with respect to the multiple phases of generating and executing preboot execution specification.

The reference to gathering environment information and installing the payload in Wookey on (Page 2, Paragraph 13, lines 7-15):

- *The hosts then execute the survey tool to gather environment information for the first and the second host and to create output files based on the gathered information. An installation tool is also downloaded from the installation station at the first and second hosts. The output files are transmitted to the installation station that responds by transferring a payload of the systems management software to both the first and second hosts. The installation tool then acts at each of the hosts to install the payload on the first and second hosts.*

and using a downloaded survey script and installing the agent software based on the survey script definitions, on (Paragraph 15 lines 5-20):

- *A survey script is downloaded from the installation device onto the network computer device. The survey script is executed on the network computer device to automatically create an output file defining a computing environment for the network computer device. The method continues with downloading an installation Daemon from the installation station onto the network computer device, and then using the installation Daemon to retrieve the output file and transfer a copy to the installation station. In response, the installation station acts to transfer the agent software to the network computer device. The installation Daemon automatically receives and installs the agent software on the network computer device. In this manner, environment information and installation of the agent software are automated functions that require no operator intervention for successful completion.*

implies that the software is polymorphic (multiphase) in the generation, and execution of its specification.

In regards to **dependent claim 4**, Wookey teaches that:

- the computing tasks accomplish image installation.

The reference to installing the software payload in Wookey on (Page 2, Paragraph 10, lines 7-8):

- *installing the software payload on the host, and dynamically configuring the software payload based on the host analysis.*

implies that image installation is accomplished.

In regards to **dependent claim 5**, Wookey teaches that:

- the computing tasks accomplish platform imaging.

The reference to selecting a software payload in Wookey on (Page 2, Paragraph

10, lines 4-6):

- *selecting a software payload (i.e., a set of software applications and/or modules that define a systems management platform)*

implies that platform imaging is accomplished.

In regards to **dependent claim 6**, Wookey teaches that:

- the computing tasks accomplish remote imaging.

The reference to delivering the software payload to the host in Wookey on (Page

2, Paragraph 10, lines 4-9):

- *analyzing a host computer device, selecting a software payload (i.e., a set of software applications and/or modules that define a systems management platform), delivering the software payload to the host, installing the software payload on the host, and dynamically configuring the software payload based on the host analysis.*

implies that remote imaging is accomplished.

In regards to **dependent claim 7**, Wookey teaches (Page 2, Paragraph 15, lines
18-21) that:

- the computing tasks accomplish remote booting.

The reference to automated functions that require no operator intervention for
successful completion in Wookey on (Page 2, Paragraph 15, lines 18-21):

- *In this manner, environment information and installation of the agent
  software are automated functions that require no operator intervention for
  successful completion.*

implies that remote booting is accomplished.

Wookey fails to teach the use of an encapsulated object-oriented polyphase language for specifying computing task.

However Paul defines machine templates using an:

- encapsulated object-oriented polyphase language for specifying computing tasks.

The reference to "machine classes" in Paul on (Page 2, lines 48-52):

- *machine classes are instantiated with machine-specific information such as network addresses and configuration information for peripherals (e.g., video monitors and printers) to produce fully configured operating systems for a computing device. Software (e.g., device drivers) and configuration information (e.g., registry entries) are installed based on the machine class selected;*

implies that the language is object-oriented, for the purpose of producing fully configured operating systems for computer devices.

Accordingly it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the systems of Wookey to incorporate the use of object-oriented class templates for creating encapsulated object oriented classes, as taught by Paul, because the use of object oriented machine classes, with the combination of XML as taught by Wookey (page 6 claim 5), would offer the advantage of being platform independent, as well as incorporate the advantages of object oriented programming. Said system would teach every limitation of claims 1- 7. Both references are analogous because they each teach the configuration of system software. In regards to operating in a pre-boot environment, most pre-load environment configuration collection for the purpose of loading software, occurs pre-boot, since a re-boot has to occur after software is loaded; for the loaded software to operate effectively.

Conclusion

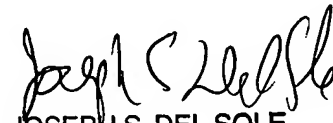6.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

Document Number:	Name:
.US-6,601,096	Lassiter, Jr., Linwood Ottis
US-2003/0159137 A1	Drake et al.
US-2003/0073303 A1	French et al.
US-2002/0156877	Yen et al.
US-2002/0156877	Lu et al.
US-2002/0073186	French et al.
US-2002/0194584	Suorsa et al.
US-5,950,011	Albrecht et al.
US-6,687,820 B2	French et al.
US-6,601,096	Lassiter, Jr., Linwood Ottis

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Evral Bodden whose telephone number is 571 272 3455. The examiner can normally be reached on Monday to Friday, 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Del Sole can be reached on 5712721130. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JOSEPH S. DEL SOLE
PRIMARY EXAMINER

2/5/07